

1 DAN MARMALEFSKY (BAR NO. 95477)
DMarmalefsky@mofo.com
2 PURVI G. PATEL (BAR NO. 270702)
PPatel@mofo.com
3 MORRISON & FOERSTER LLP
707 Wilshire Boulevard
4 Los Angeles, California 90017-3543
Telephone: 213.892.5200
5 Facsimile: 213.892.5454

6 PENELOPE A. PREVOLOS (BAR NO. 87607)
PPreovolos@mofo.com
7 DANIEL J. WILSON (BAR NO. 299239)
DWilson@mofo.com
8 MORRISON & FOERSTER LLP
425 Market Street
9 San Francisco, California 94105-2482
Telephone: 415.268.7000
10 Facsimile: 415.268.7522

11 Attorneys for Defendants
MONSTER BEVERAGE CORPORATION
12 and MONSTER ENERGY COMPANY

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 MATTHEW TOWNSEND and TED
CROSS, Individually and on Behalf of
17 All Others Similarly Situated,

18 Plaintiffs,

19 v.

20 MONSTER BEVERAGE
CORPORATION, MONSTER
21 ENERGY COMPANY,

22 Defendants.
23
24
25
26
27
28

Case No. EDCV12-02188 VAP (OPx)

**DEFENDANT MONSTER ENERGY
COMPANY'S ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Hon. Virginia A. Phillips

1 Defendant Monster Energy Company answers only those allegations
2 remaining following the United States Court of Appeals for the Ninth Circuit's
3 September 26, 2016 mandate regarding its July 8, 2016 judgment affirming in part,
4 reversing in part, and remanding this case for further proceedings consistent with its
5 disposition. Specifically, the Ninth Circuit affirmed dismissal of all claims by
6 Plaintiff Alec Fisher, all off-label claims, and the on-label claims related to caffeine-
7 content. The only claims that remain after remand are claims by Plaintiffs Matthew
8 Townsend and Ted Cross that concern specific representations on specific can labels.

9 The Ninth Circuit's ruling leaves the following four representations on the
10 labels of certain Monster Energy® drink products at issue in this case: (1) "It's the
11 ideal combo of the right ingredients in the right proportion to deliver the big bad buzz
12 that only Monster can"; (2) "Quenches thirst, hydrates like a sports drink, and brings
13 you back after a hard day's night"; (3) "RE-FRESH, RE-HYDRATE, RE-VIVE
14 (OR) RE-STORE"; and (4) "[L]imit 3 cans per day." The first statement appeared on
15 the original Green Monster Energy® cans. The second and third statements appeared
16 on Monster Rehab® cans. The last of these statements appeared on the original
17 Green Monster Energy® and Monster Rehab® cans.

18 Defendant Monster Energy Company answers as follows, for itself alone, the
19 allegations in the Second Amended Complaint ("SAC"), dated July 26, 2013 (Dkt.
20 No. 51) that were not dismissed by the Court and later affirmed by the Ninth Circuit.
21 Any and all allegations not specifically admitted herein are denied, including any
22 allegation to which Defendant inadvertently mischaracterizes below as having been
23 dismissed by the Court and affirmed by the Ninth Circuit. No statement herein
24 constitutes a comment on the legal theories upon which Plaintiffs purport to proceed.
25 To the extent the SAC asserts legal contentions, such legal contentions require no
26 response in this Answer. To the extent any response is required to headings or other
27 unnumbered paragraphs in the SAC, Defendant denies the factual allegations, if any,
28 contained in such headings or other unnumbered paragraphs.

NATURE OF THE ACTION

1
2 1. Defendant admits that Plaintiffs bring a purported consumer class action
3 on behalf of purchasers of the Monster Rehab® products identified in Footnote 2 of
4 the SAC and the original Green Monster Energy® product. Except as so admitted,
5 Defendant denies the allegations contained in Paragraph 1 of the SAC.

6 2. Defendant admits that Monster Energy Company develops, markets,
7 sells and, typically through third parties, distributes Monster Energy® drinks in the
8 United States. Defendant admits that Monster Energy is the number one energy
9 brand in the United States in unit and dollar sales. Except as so admitted, Defendant
10 denies the allegations contained in Paragraph 2 of the SAC.

11 3. Defendant admits that Monster Energy® drinks contain a proprietary
12 “energy blend” of ingredients. To the extent Plaintiffs purport to summarize,
13 interpret, or state the contents of any scientific studies, Defendant denies any
14 characterization inconsistent with the content of those studies. Except as so admitted,
15 Defendant denies the allegations contained in Paragraph 3 of the SAC.

16 4. No response is required to Paragraph 4 of the SAC, including footnote 3,
17 because the allegations pertain to claims dismissed by the Court in its November 12,
18 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

19 5. Defendant admits that Monster Rehab® product can labels contained the
20 statement “quenches thirst, hydrates like a sports drink, and brings you back after a
21 hard day’s night.” Defendant further admits that Monster Rehab® product can labels
22 contain or contained the statement “RE-FRESH, RE-HYDRATE, RE-VIVE (OR)
23 RE-STORE.” Except as so admitted and except to the extent that no response is
24 required because the allegations (specifically, “marketing, advertising”) pertain to
25 claims dismissed by the Court in its November 12, 2013 order [ECF No. 72], the
26 dismissal of which was affirmed by the Ninth Circuit, Defendant denies the
27 allegations contained in Paragraph 5 of the SAC.
28

1 6. No response is required to the third sentence in Paragraph 6 of the SAC
2 because the allegations pertain to claims dismissed by the Court in its November 12,
3 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.
4 Defendant admits that Monster Rehab® product can labels contained the statement
5 “quenches thirst, hydrates like a sports drink, and brings you back after a hard day’s
6 night.” Except as so admitted, Defendant denies the allegations contained in
7 Paragraph 6 of the SAC.

8 7. Defendant admits that the original Green Monster Energy® drink
9 contains the statement “It’s the ideal combo of the right ingredients in the right
10 proportion to deliver the big bad buzz that only Monster can.” No response is
11 required to the final clause in the third sentence of Paragraph 7 of the SAC
12 (specifically, “especially unsafe for the youth and children that Monster targets with
13 its marketing”) because the allegations pertain to claims dismissed by the Court in its
14 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
15 Ninth Circuit. Except as so admitted, Defendant denies the allegations contained in
16 Paragraph 7 of the SAC.

17 8. No response is required to Paragraph 8 of the SAC because the
18 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
19 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

20 9. No response is required to Paragraph 9 of the SAC because the
21 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
22 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

23 10. No response is required to Paragraph 10 of the SAC because the
24 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
25 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

26 11. No response is required to Paragraph 11 of the SAC because the
27 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
28 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

1 12. No response is required to portions of the first sentence in Paragraph 12
2 of the SAC (specifically, “especially adolescents and youth” and “Monster’s
3 advertising, marketing and promotions specifically target the 13 to 24 age group”) or
4 to the second sentence in Paragraph 12 because the allegations pertain to claims
5 dismissed by the Court in its November 12, 2013 order [ECF No. 72], the dismissal
6 of which was affirmed by the Ninth Circuit. Defendant admits that Plaintiffs purport
7 to summarize, interpret, or state the contents of the document attached as Exhibit B to
8 the SAC, but denies any characterization of the document that is inconsistent with its
9 content. Except as so admitted, Defendant denies the allegations contained in
10 Paragraph 12 of the SAC.

11 13. No response is required to Paragraph 13 of the SAC because the
12 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
13 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

14 14. No response is required to portions of the second sentence in Paragraph
15 14 of the SAC (specifically, the text associated with roman numerals (i) and (iii))
16 because the allegations pertain to claims dismissed by the Court in its November 12,
17 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.
18 Defendant admits that Monster Rehab® can labels no longer contain the statement
19 “hydrates like a sports drink and brings you back after a hard day’s night” and
20 currently contain the statement “fires you up and is the perfect choice after a hard
21 day’s night.” Except as so admitted, Defendant denies the allegations contained in
22 Paragraph 14 of the SAC.

23 15. No response is required to portions of Paragraph 15 of the SAC
24 (specifically, “Monster Energy Drinks enjoy . . . 35% of the youth market”) because
25 the allegations pertain to claims dismissed by the Court in its November 12, 2013
26 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.
27 Defendant admits that Monster Beverage Corporation reported gross sales by its
28 operating subsidiaries exceeding two billion dollars in 2012, primarily as a result of

1 Monster Energy Company's sale of Monster Energy® drinks. Except as so admitted,
2 Defendant denies the allegations contained in Paragraph 15 of the SAC.

3 **JURISDICTION AND VENUE**

4 16. No response is required to the second sentence of Paragraph 16 of the
5 SAC because the allegations pertain to claims dismissed by the Court in its
6 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
7 Ninth Circuit. Defendant admits that this Court has jurisdiction over certain claims
8 alleged in this action. Except as so admitted, Defendant denies the allegations
9 contained in Paragraph 16 of the SAC.

10 17. Defendant admits that this Court has jurisdiction pursuant to the Class
11 Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332, *et seq.*, and that Plaintiffs
12 purport to summarize, interpret, or state the contents of CAFA. Defendant denies
13 any characterization of CAFA that is inconsistent with its content. Defendant denies
14 that class treatment is appropriate or warranted. Except as so admitted, Defendant
15 denies the allegations contained in Paragraph 17 of the SAC.

16 18. Defendant admits that it is a citizen of California because its principal
17 place of business is located in California, and that diversity of citizenship exists
18 under CAFA based on Plaintiffs' proposed nationwide class. Defendant admits that
19 Plaintiffs allege that the total number of members of the proposed class exceed 100,
20 which meets the requirements for jurisdiction under CAFA. Defendant denies that
21 class treatment is appropriate or warranted. Except as so admitted, Defendant denies
22 the allegations contained in Paragraph 18 of the SAC.

23 19. Defendant admits that Plaintiffs allege that the amount in controversy is
24 in excess of \$5 million, which meets the requirements for jurisdiction under CAFA.
25 Defendant denies that class treatment is appropriate or warranted. Except as so
26 admitted, Defendant denies the allegations contained in Paragraph 19 of the SAC.

27 20. Defendant admits that it markets, advertises, and sells Monster Energy®
28 drinks in California, and that this Court has personal jurisdiction over it. Except as

1 so admitted, Defendant denies the allegations contained in Paragraph 20 of the SAC.

2 21. Defendant admits that it markets, advertises, and sells Monster Energy®
3 drinks in the Central District of California, and that venue is proper in this Court.
4 Except as so admitted, Defendant denies the allegations contained in Paragraph 21 of
5 the SAC.

6 22. Defendant admits that it markets, advertises, and sells Monster Energy®
7 drinks in California and throughout the United States, and that it maintains its
8 headquarters in California, from which it makes business decisions regarding the
9 marketing, advertising, and sale of Monster Energy® drinks. Except as so admitted,
10 Defendant denies the allegations contained in Paragraph 22 of the SAC.

11 **PARTIES**

12 23. No response is required to Paragraph 23 of the SAC because the
13 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
14 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

15 24. Defendant admits that Monster Rehab® product can labels contained the
16 statement “quenches thirst, hydrates like a sports drink, and brings you back after a
17 hard day’s night.” Defendant admits that Plaintiffs purport to summarize, interpret,
18 or state the contents of certain Monster Energy® drink can labels, but denies any
19 characterization of the labels that is inconsistent with the labels’ content. Defendant
20 admits that Plaintiffs purport to summarize, interpret, or state the contents of the
21 article cited in footnote 4 of Paragraph 24(b), but denies any characterization of the
22 article that is inconsistent with its content. Defendant lacks knowledge or
23 information sufficient to form a belief as to the truth of the remaining allegations in
24 Paragraph 24 of the SAC, and therefore denies these allegations.

25 25. Defendant admits that the original Green Monster Energy® can label
26 contains the statement “It’s the ideal combo of the right ingredients in the right
27 proportion to deliver the big bad buzz that only Monster can.” Defendant admits that
28 Plaintiffs purport to summarize, interpret, or state the contents of certain Monster

1 Energy® drink can labels, but denies any characterization of the labels that is
2 inconsistent with the labels' content. Defendant lacks knowledge or information
3 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 25
4 of the SAC and therefore denies these allegations.

5 26. Defendant admits that Monster Beverage Corporation (f/k/a Hansen
6 Natural Corporation) is a publicly traded holding company incorporated in Delaware
7 and headquartered in Corona, California. Defendant admits that Monster Beverage
8 Corporation conducts no operating business except through its wholly-owned
9 subsidiaries, including Monster Energy Company, which develops, markets, sells,
10 and, typically through third parties, distributes Monster Energy® drinks in the United
11 States. Except as so admitted, Defendant denies the allegations contained in
12 Paragraph 26 of the SAC.

13 27. Defendant admits that it is a wholly-owned subsidiary of Monster
14 Beverage Corporation and is incorporated in Delaware and headquartered in Corona,
15 California. Defendant admits that it was formerly named Hansen Beverage
16 Company, and that it manufactures (via third party co-packers) and distributes (via
17 third party distributors) Monster Energy® drinks. Except as so admitted, Defendant
18 denies the allegations contained in Paragraph 27 of the SAC.

19 28. Defendant admits that, before 2012, Monster Beverage Corporation was
20 named Hansen Natural Corporation and that it was named Hansen Beverage
21 Company. Defendant admits that its Monster Energy® drinks accounted for
22 approximately 89.9%, 91.2%, and 92.3% of consolidated net sales of Monster
23 Beverage Corporation's operating subsidiaries for the years ending on December 31,
24 2010, 2011, and 2012, respectively. Except as so admitted, Defendant denies the
25 allegations contained in Paragraph 28 of the SAC.

26 29. Defendant admits that it is responsible (including through third parties)
27 for designing, manufacturing, producing, testing, studying, inspecting, mixing,
28 labeling, marketing, advertising, selling, promoting, and distributing Monster

1 Energy® drinks. Except as so admitted, Defendant denies the allegations contained
2 in Paragraph 29 of the SAC.

3 **BACKGROUND**

4 **A. A MONSTER WAS BORN.**

5 30. No response is required to the second sentence of Paragraph 30 of the
6 SAC and the block-quote that follows that sentence because the allegations pertain to
7 claims dismissed by the Court in its November 12, 2013 order [ECF No. 72], the
8 dismissal of which was affirmed by the Ninth Circuit. Defendant admits that its
9 predecessor-in-name Hansen Beverage Company hired Mark Hall in 1997. Except as
10 so admitted, Defendant denies the allegations contained in Paragraph 30 of the SAC.

11 31. No response is required to Paragraph 31 of the SAC because the
12 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
13 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

14 **B. INGREDIENTS IN MONSTER DRINKS COMBINE TO DELIVER** 15 **MASSIVE AMOUNTS OF CAFFEINE.**

16 32. Defendant admits that Monster Rehab® and original Green® Monster
17 Energy® drinks contain caffeine, guarana, taurine, Panax ginseng, glucuronolactone,
18 L-carnitine, B vitamins, and other ingredients. Defendant admits that guarana
19 contains caffeine and can contain theobromine and theophylline. Defendant admits
20 that taurine naturally occurs in the human body and is an amino acid. Defendant
21 admits that ginseng is a root found in East Asia. Defendant admits that Plaintiffs
22 purport to summarize, interpret, or state the contents of an article entitled “Energy
23 Drinks: What Teenagers (and Their Doctors) Should Know” and unspecified
24 research allegedly performed at the University of Alabama at Birmingham, but
25 denies any characterization of the article or research that is inconsistent with their
26 contents. Defendant lacks knowledge or information sufficient to form a belief as to
27 the truth of Plaintiffs’ allegations in Paragraph 32 that a gram of guarana can “add 40
28 mg to 80mg of additional caffeine with a potentially longer half-life” to unidentified

1 products and that coffee never contains guarana, taurine, ginseng, B vitamins,
 2 glucuronolactone, Yohimbe, carnitine, bitter orange, and other unspecified
 3 ingredients. Except as so admitted, Defendant denies the allegations contained in
 4 Paragraph 32 of the SAC.

5 **C. MONSTER’S MARKETING, ADVERTISING, AND LABELING WAS**
 6 **FALSE AND MISLEADING.**

7 Defendant denies the allegations in footnote 5, which is affixed to the heading
 8 immediately preceding Paragraph 33 of the SAC.

9 33. No response is required to portions of the first sentence of Paragraph 33
 10 of the SAC (specifically, “marketing, advertising,” and “the Internet as well as in
 11 other forms of advertising and promotions”) because the allegations pertain to claims
 12 dismissed by the Court in its November 12, 2013 order [ECF No. 72], the dismissal
 13 of which was affirmed by the Ninth Circuit. Defendant admits that Monster Rehab®
 14 product can labels contained the statement “quenches thirst, hydrates like a sports
 15 drink, and brings you back after a hard day’s night.” Except as so admitted,
 16 Defendant denies the allegations contained in Paragraph 33 of the SAC.

17 34. Defendant admits that the Monster Rehab® Tea + Lemonade can label
 18 contained the statement “RE-FRESH, RE-HYDRATE, RE-STORE” and that
 19 Monster Rehab® product can labels contain the statement “RE-FRESH, RE-
 20 HYDRATE, RE-VIVE.” Except as so admitted, Defendant denies the allegations
 21 contained in Paragraph 34 of the SAC.

22 35. Defendant admits that the original Green Monster Energy® can label
 23 contains the statement “It’s the ideal combo of the right ingredients in the right
 24 proportion to deliver the big bad buzz that only Monster can.” Except as so admitted
 25 and except to the extent that no response is required because the allegations
 26 (specifically, “marketing, advertising”) pertain to claims dismissed by the Court in its
 27 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
 28 Ninth Circuit, Defendant denies the allegations contained in Paragraph 35 of the

1 SAC.

2 **D. REASONS WHY MONSTER'S MARKETING, ADVERTISING, AND**
 3 **LABELING IS FALSE AND MISLEADING.**

4 36. Defendant admits that Plaintiffs purport to quote Monster Rehab® can
 5 label statements, but denies any characterization of the statements that is inconsistent
 6 with the statements' content. Defendant admits that Plaintiffs purport to summarize,
 7 interpret, or state the contents of an unidentified 2009 Mayo Clinic study, but denies
 8 any characterization of the study that is inconsistent with that study's content.
 9 Defendant admits that some products labeled as sports drinks contain water, salt, and
 10 sugar and can replenish electrolytes lost during exercise. Except as so admitted,
 11 Defendant denies the allegations contained in Paragraph 36 of the SAC.

12 37. Defendant admits that Monster Rehab® and original Green Monster
 13 Energy® drinks contain caffeine and guarana. Defendant admits that Plaintiffs
 14 purport to summarize, interpret, or state the contents of articles entitled "Dangers of
 15 Monster Energy Drinks" and "Energy Drinks: What Teenagers (and Their Doctors)
 16 Should Know," and unspecified research performed at Brown University, but denies
 17 any characterization of the articles and research that is inconsistent with the content
 18 of articles and research, respectively. Except as so admitted, Defendant denies the
 19 allegations contained in Paragraph 37 of the SAC.

20 38. Defendant admits that Monster Rehab® can labels contained the
 21 statement "quenches thirst, hydrates like a sports drink, and brings you back after a
 22 hard day's night." Defendant admits that Plaintiffs purport to summarize, interpret, or
 23 state the contents of a report entitled "Youth and Energy Drinks," but denies any
 24 characterization of the report that is inconsistent with its content. Except as so
 25 admitted, Defendant denies the allegations contained in Paragraph 38 of the SAC.

26 39. Defendant admits that Monster Rehab® can labels no longer contain the
 27 statement "quenches thirst, hydrates like a sports drink, and brings you back after a
 28 hard day's night," and currently contain the statement "quenches thirst, fires you up,

1 and is the perfect choice after a hard day's night." Except as so admitted, Defendant
2 denies the allegations contained in Paragraph 39 of the SAC.

3 40. No response is required to Paragraph 40 of the SAC because the
4 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
5 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

6 41. Defendant admits that the original Green Monster Energy® drink
7 contains the statement "It's the ideal combo of the right ingredients in the right
8 proportion to deliver the big bad buzz that only Monster can." Except as so admitted,
9 Defendant denies the allegations contained in Paragraph 41 of the SAC.

10 42. Defendant admits that Monster Rehab® and original Green® Monster
11 Energy® drink can labels contained the statement "Consume responsibly — Max 1
12 can per four hours, with limit 3 cans per day. Not recommended for children, people
13 sensitive to caffeine, pregnant women or women who are nursing" or "Consume
14 Responsibly — Limit (3) cans per day. Not recommended for children, pregnant
15 women or people sensitive to caffeine." Except as so admitted, Defendant denies the
16 allegations contained in Paragraph 42 of the SAC.

17 43. Defendant admits that three 16-oz cans of Monster Energy® drinks
18 collectively would typically contain a total of approximately 480 milligrams of
19 caffeine. Defendant admits that Plaintiffs purport to summarize, interpret, or state
20 the contents of unspecified studies by the University of California and in the journal
21 *Pediatrics*, but denies any characterization of the studies that is inconsistent with the
22 content of those studies. Except as so admitted, Defendant denies the allegations
23 contained in Paragraph 43 of the SAC.

24 44. Defendant admits that Monster Rehab® and original Green® Monster
25 Energy® drink can labels contain the statement "consume responsibly." Except as so
26 admitted, Defendant denies the allegations contained in Paragraph 44 of the SAC.

27 45. No response is required to portions of the second sentence in Paragraph
28 45 of the SAC (specifically, the reference to former plaintiff Alec Fisher) because the

1 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
 2 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit. Defendant
 3 admits that Monster Rehab® and original Green® Monster Energy® drink can labels
 4 contain the statement “Not recommended for children, people sensitive to caffeine,
 5 pregnant women or women who are nursing.” Except as so admitted, Defendant
 6 denies the allegations contained in Paragraph 45 of the SAC.

7 **E. MONSTER MARKETS ITS ENERGY DRINKS PRIMARILY TO**
 8 **TEENAGERS BUT ENTIRELY OMITTS ANY WARNINGS DIRECTED**
 9 **AT THAT TARGET MARKET.**

10 46. No response is required to Paragraph 46 of the SAC because the
 11 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
 12 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

13 47. No response is required to Paragraph 47 of the SAC, including footnote
 14 6, because the allegations pertain to claims dismissed by the Court in its November
 15 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth
 16 Circuit.

17 48. No response is required to Paragraph 48 of the SAC, including footnote
 18 7, because the allegations pertain to claims dismissed by the Court in its November
 19 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth
 20 Circuit.

21 49. No response is required to Paragraph 49 of the SAC because the
 22 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
 23 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

24 50. No response is required to Paragraph 50 of the SAC because the
 25 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
 26 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

27 **F. MONSTER’S STRONG REFERENCES TO ALCOHOL AND SEX**
 28 **PROMOTES CONSUMPTION (DEPENDENCE) AMONG**
TEENAGERS WHILE OBSCURING UNDISCLOSED HEALTH RISKS.

51. No response is required to Paragraph 51 of the SAC because the

1 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
2 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

3 52. No response is required to Paragraph 52 of the SAC because the
4 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
5 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

6 53. No response is required to Paragraph 53 of the SAC, including footnote
7 8, because the allegations pertain to claims dismissed by the Court in its November
8 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth
9 Circuit.

10 54. No response is required to Paragraph 54 of the SAC, including footnote
11 9, because the allegations pertain to claims dismissed by the Court in its November
12 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth
13 Circuit.

14 55. No response is required to Paragraph 55 of the SAC because the
15 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
16 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

17 56. No response is required to Paragraph 56 of the SAC because the
18 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
19 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

20 **G. FURTHER EVIDENCING INTENTIONAL MISCONDUCT, MONSTER**
21 **DECEIVES ITS CONSUMERS INTO BELIEVING THAT THE**
22 **CELEBRITIES AND ATHLETES ENDORSING MONSTER DRINKS**
ARE CONSUMING SUCH DRINK WHEN THEY ARE DRINKING
WATER.

23 57. No response is required to Paragraph 57 of the SAC because the
24 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
25 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

26 58. No response is required to Paragraph 58 of the SAC because the
27 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
28 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

1 59. No response is required to Paragraph 59 of the SAC because the
2 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
3 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

4 60. No response is required to Paragraph 60 of the SAC because the
5 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
6 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

7 **H. MONSTER’S UNFAIR AND DECEPTIVE LABELING,**
8 **ADVERTISING, AND MARKETING EXPOSES CONSUMERS TO**
9 **SERIOUS HEALTH RISKS.**

10 61. Defendant admits that it has publicly stated that Monster Energy®
11 drinks are safe and that billions have been safely consumed around the world since
12 their launch in 2002. Defendant admits that Plaintiffs purport to summarize,
13 interpret, or state the contents of the document attached as Exhibit B to the SAC, but
14 denies any characterization of the document that is inconsistent with that document’s
15 content. Defendant admits that Plaintiffs purport to quote statements made by
16 Rodney Sacks and Mark Hall in footnote 10, but denies any characterization of the
17 purported statements that is inconsistent with the statements’ content. Except as so
18 admitted, Defendant denies the allegations contained in Paragraph 61 of the SAC.

19 62. Defendant admits that Plaintiffs purport to summarize, interpret, or state
20 the contents of the November 2011 “Dawn Report” in addition to a 2013 update of
21 that report, but denies any characterization of those reports that is inconsistent with
22 their contents. Except as so admitted, Defendant denies the allegations contained in
23 Paragraph 62 of the SAC.

24 63. Defendant admits that Plaintiffs purport to summarize, interpret, or state
25 the contents of a 2013 update to the “Dawn Report,” but denies any characterization
26 of the report that is inconsistent with that report’s content. Except as so admitted,
27 Defendant denies the allegations contained in Paragraph 63 of the SAC.

28 64. Defendant admits that Plaintiffs purport to summarize, interpret, or state
the contents of an unidentified article by the American Academy of Pediatrics and an

1 article entitled “Energy Drinks: What Teenagers (and Their Doctors) Should Know,”
 2 but denies any characterization of the articles that is inconsistent with the content of
 3 the articles. Except as so admitted, Defendant denies the allegations contained in
 4 Paragraph 64 of the SAC, including footnote 11.

5 65. Defendant admits that Plaintiffs purport to summarize, interpret, or state
 6 the contents of a statement by a Dr. Suzanne Steinbaum, an unidentified survey
 7 performed by Johns Hopkins University, and an unidentified study by the American
 8 Heart Association, but denies any characterization of the statement, survey, or study
 9 that is inconsistent with their contents. Except as so admitted, Defendant denies the
 10 allegations contained in Paragraph 65 of the SAC.

11 66. Defendant admits that Plaintiffs purport to summarize, interpret, or state
 12 the contents of the document attached as Exhibit C to the SAC, but denies any
 13 characterization of the document that is inconsistent with content of that document.
 14 Except as so admitted, Defendant denies the allegations contained in Paragraph 66 of
 15 the SAC.

16 67. Defendant admits that Plaintiffs purport to summarize, interpret, or state
 17 the contents of a policy purportedly endorsed by certain voting members of the
 18 American Medical Association and unspecified studies allegedly cited by those
 19 members, but denies any characterization of the policy and studies that is inconsistent
 20 with the policy’s and studies’ content. Except as so admitted, Defendant denies the
 21 allegations contained in Paragraph 67 of the SAC.

22 68. Defendant denies the allegations contained in Paragraph 68 of the SAC.

23 **I. MONSTER’S POST-COMPLAINT REVISIONS TO THE COMPANY’S**
 24 **MARKETING AND LABELING CONFIRM THE UNFAIR AND**
 25 **DECEPTIVE NATURE OF THE PRACTICES ALLEGED HEREIN.**

26 69. No response is required to portions Paragraph 69(a) and (c) of the SAC
 27 because the allegations pertain to claims dismissed by the Court in its November 12,
 28 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.
 Defendant otherwise admits that Monster Rehab® can labels no longer contain the

1 statement “hydrates like a sports drink and brings you back after a hard day’s night,”
 2 and currently contain the statement “fires you up and is the perfect choice after a hard
 3 day’s night.” Except as so admitted, Defendant denies the allegations contained in
 4 Paragraph 69 of the SAC.

5 **CLASS ACTION ALLEGATIONS**

6 70. Defendant admits that Plaintiffs purport to bring a putative class action
 7 and seek to certify a class as defined in Paragraph 70 of the SAC. Defendant denies
 8 that class treatment is appropriate.

9 71. Defendant admits that Plaintiffs purport to exclude certain individuals
 10 and entities from their proposed class definition as described in Paragraph 71 of the
 11 SAC. Defendant denies that class treatment is appropriate.

12 72. Defendant admits that Plaintiffs allege in Paragraph 72 of the SAC that
 13 they may “expand or narrow” their proposed class definition. Defendant denies that
 14 class treatment is appropriate.

15 73. Except to the extent that no response is required because the allegations
 16 (specifically, “marketing, advertising”) pertain to claims dismissed by the Court in its
 17 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
 18 Ninth Circuit, Defendant denies the allegations contained in Paragraph 73 of the
 19 SAC.

20 74. Defendant denies the allegations contained in Paragraph 74 of the SAC.

21 75. Defendant denies the allegations contained in Paragraph 75 of the SAC.

22 76. No response is required to portions of Paragraph 76(a) and(g)
 23 (specifically, “advertising,” “marketing,” and “promotion”) and all of Paragraph
 24 76(b) and (h) of the SAC because the allegations pertain to claims dismissed by the
 25 Court in its November 12, 2013 order [ECF No. 72], the dismissal of which was
 26 affirmed by the Ninth Circuit. Defendant otherwise denies the allegations contained
 27 in Paragraph 76 of the SAC, including the balance of subparagraphs (a) and (g), and
 28 all of subparagraphs (c)-(f), and (i)-(k).

1 77. Defendant denies the allegations contained in Paragraph 77 of the SAC.

2 78. Defendant denies the allegations contained in Paragraph 78 of the SAC.

3 79. Defendant denies the allegations contained in Paragraph 79 of the SAC.

4 80. Defendant denies the allegations contained in Paragraph 80 of the SAC.

5 81. Defendant denies the allegations contained in Paragraph 81 of the SAC.

6 82. Defendant denies the allegations contained in Paragraph 82 of the SAC.

7 **COUNT 1**

8 **For Violations of the UCL, Cal. Bus. & Prof. Code Section 17200, *et seq.***

9 83. Defendant realleges and incorporates by reference each and every
10 preceding paragraph of this Answer as if fully set forth herein.

11 84. Defendant admits that Plaintiffs purport to bring a cause of action under
12 California Business & Professions Code §17200, *et seq.* (the “UCL”) and that
13 Plaintiffs purport to summarize, interpret, or state its contents. Defendant denies any
14 characterization of the UCL that is inconsistent with its content.

15 85. Except to the extent that no response is required because the allegations
16 (specifically, “marketing, advertising”) pertain to claims dismissed by the Court in its
17 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
18 Ninth Circuit, Defendant denies the allegations contained in Paragraph 85 of the
19 SAC.

20 86. Defendant admits that Monster Rehab® can labels contained the
21 statement “hydrates like a sports drink and brings you back after a hard day’s night”
22 and that they contain or contained the statement “RE-FRESH, RE-HYDRATE, RE-
23 VIVE (OR) RE-STORE.” Except as so admitted, Defendant denies the allegations
24 contained in Paragraph 86 of the SAC.

25 87. Defendant lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations contained in the third sentence of Paragraph 87 of the
27 SAC, therefore denies these allegations. Defendant otherwise denies the allegations
28 contained in Paragraph 87 of the SAC.

1 88. Defendant admits that Monster Rehab® can labels no longer contain the
2 statement “quenches thirst, hydrates like a sports drink, and brings you back after a
3 hard day’s night,” and currently contain the statement “quenches thirst, fires you up,
4 and is the perfect choice after a hard day’s night.” Except as so admitted, Defendant
5 denies the allegations contained in Paragraph 88 of the SAC.

6 89. Defendant lacks knowledge or information sufficient to form a belief as
7 to the truth of Plaintiffs’ allegations contained in the second sentence of Paragraph 89
8 of the SAC. Defendant admits that original Green Monster Energy® drink can labels
9 contain the statement “It’s the ideal combo of the right ingredients in the right
10 proportion to deliver the big bad buzz that only Monster can.” Except as so admitted,
11 Defendant denies the allegations contained in Paragraph 89 of the SAC.

12 90. No response is required to portions of the second sentence in Paragraph
13 90 of the SAC (specifically, “especially unsafe for the youth and children that
14 Monster target [sic] with its marketing”) because the allegations pertain to claims
15 dismissed by the Court in its November 12, 2013 order [ECF No. 72], the dismissal
16 of which was affirmed by the Ninth Circuit. Defendant otherwise denies the
17 allegations contained in Paragraph 90 of the SAC.

18 91. Defendant admits that Plaintiffs purport to summarize, interpret, or state
19 the contents of the California Sherman Food, Drug, and Cosmetic Law, Cal. Health
20 & Safety Code §109875, *et seq.*, and the Federal Food, Drug, and Cosmetic Act, 21
21 U.S.C. § 343 a-1, but denies any characterization of those laws that is inconsistent
22 with the content of the sections. Except as so admitted, Defendant denies the
23 allegations contained in Paragraph 91 of the SAC.

24 92. Defendant admits that Plaintiffs purport to summarize, interpret, or state
25 the contents of California Business & Professions Code §17200, *et seq.*, and §17500,
26 *et seq.*, and California Civil Code § 1750, *et seq.*, but denies any characterization of
27 those statutes that is inconsistent with the contents of the sections, respectively.
28 Except as so admitted, Defendant denies the allegations contained in Paragraph 92 of

1 the SAC.

2 93. Except to the extent that no response is required because the allegations
3 (specifically, “marketing, advertising”) pertain to claims dismissed by the Court in its
4 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
5 Ninth Circuit, Defendant denies the allegations contained in Paragraph 93 of the
6 SAC.

7 94. Defendant admits that Monster Rehab® can labels contained the
8 statement “hydrates like a sports drink.” Defendant admits that Plaintiffs purport to
9 summarize, interpret, or state the contents of unidentified scientific studies, but
10 denies any characterization of those studies that is inconsistent with their content.
11 Except as so admitted, Defendant denies the allegations contained in Paragraph 94 of
12 the SAC.

13 95. No response is required to Paragraph 95 of the SAC because the
14 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
15 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

16 96. No response is required to portions of Paragraph 96 of the SAC
17 (specifically, “especially unsafe for the youth and children that Monster targets”)
18 because the allegations pertain to claims dismissed by the Court in its November 12,
19 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.
20 Defendant otherwise denies the allegations contained in Paragraph 96 of the SAC.

21 97. No response is required to Paragraph 97 of the SAC because the
22 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
23 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

24 98. No response is required to Paragraph 98 of the SAC because the
25 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
26 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

27 99. No response is required to Paragraph 99 of the SAC because the
28 allegations pertain to claims dismissed by the Court in its November 12, 2013 order

1 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

2 100. No response is required to Paragraph 100 of the SAC because the
3 allegations pertain to claims dismissed by the Court in its November 12, 2013 order
4 [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.

5 101. Defendant denies the allegations contained in Paragraph 101 of the
6 SAC.

7 102. Except to the extent that no response is required because the allegations
8 (specifically, “marketing, advertising” and “marketed, advertised”) pertain to claims
9 dismissed by the Court in its November 12, 2013 order [ECF No. 72], the dismissal
10 of which was affirmed by the Ninth Circuit, Defendant denies the allegations
11 contained in Paragraph 102 of the SAC.

12 103. No response is required to portions of the first (specifically, “marketing,
13 advertising”) and all of the third and fourth sentences of Paragraph 103 of the SAC
14 because the allegations pertain to claims dismissed by the Court in its November 12,
15 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit.
16 Defendant otherwise denies the allegations contained in Paragraph 103 of the SAC.

17 104. Except to the extent that no response is required because the allegations
18 (specifically, “marketed, advertised”) pertain to claims dismissed by the Court in its
19 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
20 Ninth Circuit, Defendant denies the allegations contained in Paragraph 104 of the
21 SAC.

22 105. Defendant denies the allegations contained in Paragraph 105 of the
23 SAC.

24 106. Defendant admits that Plaintiffs purport to bring a class action under the
25 UCL. Except as so admitted, Defendant denies the allegations contained in
26 Paragraph 106 of the SAC.

27 107. Defendant admits that Plaintiffs purport to seek relief under California
28 Business & Professions Code §17203. Except as so admitted, Defendant denies the

1 allegations contained in Paragraph 107 of the SAC, and denies that Plaintiffs are
2 entitled to any relief.

3 **COUNT II**

4 **For Violations of the FAL, Bus. & Prof. Code Section 17500, *et seq.***

5 108. Defendant realleges and incorporates by reference each and every
6 preceding paragraph of this Answer as if fully set forth herein.

7 109. Except to the extent that no response is required because the allegations
8 (specifically, “advertising” and “marketing”) pertain to claims dismissed by the
9 Court in its November 12, 2013 order [ECF No. 72], the dismissal of which was
10 affirmed by the Ninth Circuit, Defendant denies the allegations contained in
11 Paragraph 109 of the SAC.

12 110. No response is required to any portion of the first sentence of Paragraph
13 110 of the SAC other than allegations about labeling because the allegations pertain
14 to claims dismissed by the Court in its November 12, 2013 order [ECF No. 72], the
15 dismissal of which was affirmed by the Ninth Circuit. Defendant admits that it labels
16 Monster Energy® drinks. Except as so admitted, Defendant denies the allegations
17 contained in Paragraph 110 of the SAC.

18 111. Defendant lacks knowledge or information sufficient to form a belief as
19 to the truth of the allegations contained in the fourth sentence of Paragraph 111 of the
20 SAC and therefore denies such allegations. Defendant admits that Monster Rehab®
21 can labels contained the statement “quenches thirst, hydrates like a sports drink, and
22 brings you back after a hard day’s night” and that they contain or contained the
23 statement “RE-FRESH, RE-HYDRATE, RE-VIVE (OR) RE-STORE.” Except as so
24 admitted, Defendant denies the allegations contained in Paragraph 111 of the SAC.

25 112. Defendant admits that Monster Rehab® can labels no longer contain the
26 statement “quenches thirst, hydrates like a sports drink, and brings you back after a
27 hard day’s night,” and currently contain the statement “quenches thirst, fires you up,
28 and is the perfect choice after a hard day’s night.” Except as so admitted and except

1 to the extent that no response is required because the allegations (specifically,
2 “marketing”) pertain to claims dismissed by the Court in its November 12, 2013
3 order [ECF No. 72], the dismissal of which was affirmed by the Ninth Circuit,
4 Defendant denies the allegations contained in Paragraph 112 of the SAC.

5 113. Defendant lacks knowledge or information sufficient to form a belief as
6 to the allegations contained in the second sentence of Paragraph 113 of the SAC.
7 Defendant admits that the original Green Monster Energy® drink contains the
8 statement “It’s the ideal combo of the right ingredients in the right proportion to
9 deliver the big bad buzz that only Monster can.” Except as so admitted and except to
10 the extent that no response is required because the allegations (specifically,
11 “marketing, advertising”) pertain to claims dismissed by the Court in its November
12 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the Ninth
13 Circuit, Defendant denies the allegations contained in Paragraph 113 of the SAC.

14 114. No response is required to portions of the second sentence of Paragraph
15 114 of the SAC (specifically, “especially unsafe for the youth and children that
16 Monster target with its marketing”) because the allegations pertain to claims
17 dismissed by the Court in its November 12, 2013 order [ECF No. 72], the dismissal
18 of which was affirmed by the Ninth Circuit. Defendant otherwise denies the
19 allegations contained in Paragraph 114 of the SAC.

20 115. No response is required to portions of the first sentence of Paragraph
21 115 of the SAC (specifically, “advertisements,” “inducements,” and “promotional
22 materials”) because the allegations pertain to claims dismissed by the Court in its
23 November 12, 2013 order [ECF No. 72], the dismissal of which was affirmed by the
24 Ninth Circuit. Defendant lacks knowledge or information sufficient to form a belief
25 as to the truth of the allegations contained in the second sentence of Paragraph 115 of
26 the SAC and therefore denies these allegations. Defendant otherwise denies the
27 allegations contained in Paragraph 115 of the SAC.

28 116. Defendant denies the allegations contained in Paragraph 116 of the

1 SAC.

2 117. Defendant admits that Plaintiffs purport to seek relief under California
3 Business & Professions Code §17535. Except as so admitted, Defendant denies the
4 allegations contained in Paragraph 117 of the SAC, and denies that Plaintiffs are
5 entitled to any relief.

6 **COUNT III**

7 **For Violations of the CLRA, Cal. Civ. Code Section 1750, *et seq.***

8 118. Defendant realleges and incorporates by reference each and every
9 preceding paragraph of this Answer as if fully set forth herein.

10 119. Defendant admits that Plaintiffs purport to bring a cause of action under
11 California Civil Code § 1750, *et seq.*

12 120. Defendant states that insofar as the allegations in Paragraph 120 of the
13 SAC state conclusions of law, no response thereto is required, and otherwise denies
14 the allegations contained in Paragraph 120 of the SAC.

15 121. Defendant states that insofar as the allegations in Paragraph 121 of the
16 SAC state conclusions of law, no response thereto is required, and otherwise denies
17 the allegations contained in Paragraph 121 of the SAC.

18 122. Defendant states that insofar as the allegations in Paragraph 122 of the
19 SAC state conclusions of law, no response thereto is required, and otherwise denies
20 the allegations contained in Paragraph 122 of the SAC.

21 123. Except to the extent that no response is required because the allegations
22 (specifically, “advertising, marketing, promotion”) pertain to claims dismissed by the
23 Court in its November 12, 2013 order [ECF No. 72], the dismissal of which was
24 affirmed by the Ninth Circuit, Defendant denies the allegations contained in
25 Paragraph 123 of the SAC.

26 124. Except to the extent that no response is required because the allegations
27 (specifically, “advertising, marketing, promotion”) pertain to claims dismissed by the
28 Court in its November 12, 2013 order [ECF No. 72], the dismissal of which was

1 affirmed by the Ninth Circuit, Defendant denies the allegations contained in
2 Paragraph 124 of the SAC, including subparagraphs (a)-(e).

3 125. Defendant admits that Plaintiffs purport to seek injunctive relief and
4 restitution. Except so admitted, Defendant denies the allegations contained in
5 Paragraph 125 of the SAC, and denies that Plaintiffs are entitled to any relief.

6 126. Defendant admits that Plaintiffs purport to seek relief under California
7 Civil Code §1780(d). Except as so admitted, Defendant denies the allegations
8 contained in Paragraph 126 of the SAC, and denies that Plaintiffs are entitled to any
9 relief.

10 127. Defendant admits that former plaintiff Alec Fisher sent Monster
11 Beverage Corporation and Monster Energy Company a letter dated December 12,
12 2012, purporting to provide “Notice of Violation of Violation of California
13 Consumer Legal Remedies Act and the Magnuson-Moss Warranty Act.” Defendant
14 admits that Plaintiffs purport to summarize, interpret, or state the contents of this
15 letter, but denies any characterization of the letter that is inconsistent with the letter’s
16 content. Except as so admitted, Defendant denies the allegations contained in
17 Paragraph 127 of the SAC.

18 128. Defendant denies the allegations contained in Paragraph 128 of the
19 SAC.

20 129. Defendant admits that Plaintiffs purport to seek relief under California
21 Civil Code §1780(a)(3). Except so admitted, Defendant denies the allegations
22 contained in Paragraph 129 of the SAC, and deny the Plaintiffs are entitled to any
23 relief.

24 130. Defendant admits that Plaintiffs purport to seek attorneys’ fees under
25 California Civil Code §1780(d). Except so admitted, Defendant denies the
26 allegations contained in Paragraph 130 of the SAC, and denies that Plaintiffs are
27 entitled to any attorneys’ fees.
28

COUNT IV

Breach of Express and Implied Warranty

131. No response is required to Paragraph 131 of the SAC because the Court dismissed Plaintiffs' breach of express and implied warranty claim in the Court's November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

132. No response is required to Paragraph 132 of the SAC because the Court dismissed Plaintiffs' breach of express and implied warranty claim in the Court's November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

133. No response is required to Paragraph 133 of the SAC because the Court dismissed Plaintiffs' breach of express and implied warranty claim in the Court's November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

134. No response is required to Paragraph 134 of the SAC because the Court dismissed Plaintiffs' breach of express and implied warranty claim in the Court's November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

135. No response is required to Paragraph 135 of the SAC because the Court dismissed Plaintiffs' breach of express and implied warranty claim in the Court's November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

136. No response is required to Paragraph 136 of the SAC because the Court dismissed Plaintiffs' breach of express and implied warranty claim in the Court's November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

137. No response is required to Paragraph 137 of the SAC because the Court dismissed Plaintiffs' breach of express and implied warranty claim in the Court's

1 November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling
2 on appeal.

3 138. No response is required to Paragraph 138 of the SAC because the Court
4 dismissed Plaintiffs' breach of express and implied warranty claim in the Court's
5 November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling
6 on appeal.

7 139. No response is required to Paragraph 139 of the SAC because the Court
8 dismissed Plaintiffs' breach of express and implied warranty claim in the Court's
9 November 12, 2013 order [ECF No. 72], and Plaintiffs did not challenge that ruling
10 on appeal.

11 **COUNT V**

12 **For Violations of the MMWA, 15 U.S.C. Section 2301, *et seq.***

13 140. No response is required to Paragraph 140 of the SAC because the Court
14 dismissed Plaintiffs' MMWA claim in the Court's November 12, 2013 order [ECF
15 No. 72], and Plaintiffs did not challenge that ruling on appeal.

16 141. No response is required to Paragraph 141 of the SAC because the Court
17 dismissed Plaintiffs' MMWA claim in the Court's November 12, 2013 order [ECF
18 No. 72], and Plaintiffs did not challenge that ruling on appeal.

19 142. No response is required to Paragraph 142 of the SAC because the Court
20 dismissed Plaintiffs' MMWA claim in the Court's November 12, 2013 order [ECF
21 No. 72], and Plaintiffs did not challenge that ruling on appeal.

22 143. No response is required to Paragraph 143 of the SAC because the Court
23 dismissed Plaintiffs' MMWA claim in the Court's November 12, 2013 order [ECF
24 No. 72], and Plaintiffs did not challenge that ruling on appeal.

25 144. No response is required to Paragraph 144 of the SAC because the Court
26 dismissed Plaintiffs' MMWA claim in the Court's November 12, 2013 order [ECF
27 No. 72], and Plaintiffs did not challenge that ruling on appeal.

28 145. No response is required to Paragraph 145 of the SAC because the Court

1 dismissed Plaintiffs' MMWA claim in the Court's November 12, 2013 order [ECF
2 No. 72], and Plaintiffs did not challenge that ruling on appeal.

3 146. No response is required to Paragraph 146 of the SAC because the Court
4 dismissed Plaintiffs' MMWA claim in the Court's November 12, 2013 order [ECF
5 No. 72], and Plaintiffs did not challenge that ruling on appeal.

6 **COUNT VI**

7 **Unjust Enrichment**

8 147. No response is required to Paragraph 147 of the SAC because the Court
9 dismissed Plaintiffs' unjust enrichment claim in the Court's November 12, 2013
10 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

11 148. No response is required to Paragraph 148 of the SAC because the Court
12 dismissed Plaintiffs' unjust enrichment claim in the Court's November 12, 2013
13 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

14 149. No response is required to Paragraph 149 of the SAC because the Court
15 dismissed Plaintiffs' unjust enrichment claim in the Court's November 12, 2013
16 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

17 150. No response is required to Paragraph 150 of the SAC because the Court
18 dismissed Plaintiffs' unjust enrichment claim in the Court's November 12, 2013
19 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

20 151. No response is required to Paragraph 151 of the SAC because the Court
21 dismissed Plaintiffs' unjust enrichment claim in the Court's November 12, 2013
22 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

23 152. No response is required to Paragraph 152 of the SAC because the Court
24 dismissed Plaintiffs' unjust enrichment claim in the Court's November 12, 2013
25 order [ECF No. 72], and Plaintiffs did not challenge that ruling on appeal.

26 **PRAYER FOR RELIEF**

27 Defendant denies Plaintiffs are entitled to any of the requested relief, including
28 the relief requested in paragraphs A through J under the section entitled "Prayer for

1 Relief.”

2 **AFFIRMATIVE DEFENSES**

3 Defendant has not completed its investigation of the facts of this case, has not
 4 completed discovery in this matter, and has not completed preparation for trial. The
 5 affirmative defenses asserted herein are based on Defendant’s knowledge,
 6 information, and belief at this time, and Defendant specifically reserves the right to
 7 modify, amend, or supplement any affirmative defenses contained herein at any time.
 8 Defendant reserves the right to assert additional defenses as information is gathered
 9 through discovery and investigation. In asserting these defenses, Defendant does not
 10 allege or admit that it has the burden of proof and/or persuasion with respect to any
 11 of these matters, and does not assume the burden of proof and/or persuasion with
 12 respect to any matter as to which Plaintiffs have the burden of proof or persuasion.

13 **FIRST DEFENSE**

14 Plaintiffs’ claims and the claims of the purported class are barred, in whole or
 15 in part, because they lack standing to assert any or all of the causes of action alleged
 16 in the SAC.

17 **SECOND DEFENSE**

18 The SAC should be dismissed because the Court should abstain from
 19 proceeding because Plaintiffs’ claims raise issues that are within the jurisdiction of
 20 the United States Food and Drug Administration (“FDA”).

21 **THIRD DEFENSE**

22 The SAC should be dismissed pursuant to the doctrine of primary jurisdiction
 23 because Plaintiffs’ claims raise issues that should be addressed in the first instance by
 24 the FDA.

25 **FOURTH DEFENSE**

26 The SAC should be dismissed by reason of express, implied, and/or field
 27 preemption by the Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 341, *et seq.* and
 28 related regulations.

1 **FIFTH DEFENSE**

2 The SAC is barred, in whole or in part, because the challenged statements are
3 not actionable.

4 **SIXTH DEFENSE**

5 Plaintiffs' claims are barred because Defendant was under no duty to disclose
6 any of the purported information Plaintiffs allege was not disclosed.

7 **SEVENTH DEFENSE**

8 The SAC is barred, in whole or in part, by the doctrines of waiver or estoppel.

9 **EIGHTH DEFENSE**

10 The SAC is barred, in whole or in part, because the statements at issue are
11 protected under the First Amendment to the United States Constitution and the Free
12 Speech clause of the California Constitution, Article I, Section 2.

13 **NINTH DEFENSE**

14 The SAC is barred, in whole or in part, because Plaintiffs' demands violate the
15 Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3.

16 **TENTH DEFENSE**

17 The claims against Defendant are barred, in whole or in part, by reason of
18 Plaintiffs' failure to give proper notice of their claims.

19 **ELEVENTH DEFENSE**

20 Any claims for damages or other monetary recovery by Plaintiffs or the
21 putative class must be offset and reduced by the value received

22 **TWELFTH DEFENSE**

23 Plaintiffs' claim for restitution is barred because the amount of damages, if
24 any, is speculative, and because of the impossibility of ascertaining and allocating
25 these alleged damages.

26 **THIRTEENTH DEFENSE**

27 The claims are barred, in whole or in part, insofar as they seek equitable relief
28 for claims for which there is an adequate legal remedy.

DEMAND FOR JURY TRIAL

Defendant hereby demands a trial by jury on all issues upon which trial by jury may be had.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs take nothing by virtue of their SAC;
2. That the Court render judgment in favor of Defendant, and dismiss the SAC with prejudice;
3. That the Court otherwise deny class certification;
4. That the Court award Defendant its reasonable costs, expenses, and attorneys' fees incurred herein; and
5. For such other and further relief as the Court deems just and proper.

Dated: March 27, 2017

MORRISON & FOERSTER LLP

By: /s/ Dan Marmalefsky
Dan Marmalefsky

*Attorneys for Defendants
Monster Beverage Corporation
and Monster Energy Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of March, 2017, the foregoing document was filed electronically on the CM/ECF system, which caused all CM/ECF participants to be served by electronic means.

/s/ Dan Marmalefsky

Dan Marmalefsky

***Attorneys for Defendants
Monster Beverage Corporation
and Monster Energy Company***